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## SMALL BUSINESS ADMINISTRATION

13 CFR Part 126

RIN: 3245-AG81

HUBZone and National Defense Authorization Act for Fiscal Year 2016 Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule contains several amendments to the regulations governing the HUBZone Program. The U.S. Small Business Administration (SBA) is making changes to its regulations to implement section 866 of the National Defense Authorization Act for Fiscal Year 2016 (2016 NDAA). Section 866 of the 2016 NDAA made the following changes to the HUBZone program: authorized Native Hawaiian Organizations to own HUBZone small business concerns; expanded the definition of “base closure area” under the HUBZone program; and authorized the inclusion of “qualified disaster areas” under the HUBZone program. This direct final rule would implement these changes in SBA’s regulations.

DATES: This rule is effective on [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by RIN 3245-AG81 by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or Hand Delivery/Courier: Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on <http://www.Regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.Regulations.gov>, please submit the information to Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416 and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Mariana Pardo, Director, HUBZone Program, 409 Third Street SW, Washington, DC 20416, 202-205-2985, [hubzone@sba.gov](mailto:hubzone@sba.gov).

#### SUPPLEMENTARY INFORMATION:

This direct final rule implements several conforming amendments to SBA regulations from the National Defense Authorization Act for Fiscal Year 2016, Public Law 114-92, 129 Stat. 726, November 25, 2015 (2016 NDAA). The 2016 NDAA became effective on November 25, 2015. Section 866 of the 2016 NDAA made the following changes to the HUBZone program: authorized Native Hawaiian Organizations (NHOs) to own HUBZone small business concerns; expanded the definition of “base closure area” under the HUBZone program; and authorized the inclusion of “qualified disaster areas” under the HUBZone program.

SBA seeks to amend its HUBZone regulations to mirror the changes the 2016 NDAA made to the Small Business Act, and to avoid public confusion and possible misinterpretations of SBA's HUBZone program. Since these are conforming amendments, with no extraneous interpretation or other expanded materials, SBA expects no significant adverse comments. Based on that fact, SBA has decided to proceed with a direct final rule giving the public 30 days to comment. If SBA receives a significant adverse comment during the comment period, SBA will withdraw the rule, and proceed with a new proposed rule. The statute makes the following changes:

- General Summary – Expands the HUBZone program to assist small businesses in disasters areas and base closure areas and provides equal treatment under the HUBZone program for small businesses owned by NHOs.
- “Major Disaster” Areas – Treats major disaster areas as HUBZones for a period of 5 years. Applies to census tracts and nonmetropolitan counties (NMC) located in “major disaster” areas, if such census tract or NMC lost its HUBZone eligibility within the past 5 years or will lose its HUBZone eligibility within 2 years after the major disaster.
- “Catastrophic Incident” Areas – Treats areas where catastrophic incidents occurred as HUBZones for a period of 10 years. Applies to census tracts and NMCs located in areas where catastrophic incidents occurred, if such census tract or NMC lost its HUBZone eligibility within the past 5 years or will lose its HUBZone eligibility within 2 years after the catastrophic incident.
- Base Closures Areas (BRAC) – Extends HUBZone eligibility for BRACs to 8 years (up from 5) and expands HUBZone eligibility to census tracts and NMCs that (1)

contain BRACs, (2) intersect with BRACs, (3) are contiguous to BRACs, or (4) are contiguous to any census tract or NMC described in (1) through (3).

- Native Hawaiian Organizations (NHO) – Allows small businesses owned by NHOs to qualify as HUBZone companies.

In order to implement the changes made by section 866 of the 2016 NDAA, SBA is amending §§ 126.103 and 126.200 of its regulations.

SBA is amending § 126.103 by revising the definitions of the terms “Base closure area”, “HUBZone”, “HUBZone small business concern (HUBZone SBC)”, and “Qualified base closure area”, and by adding new definitions for the terms “Native Hawaiian Organization (NHO)” and “Qualified disaster area”. This rule adopts the definitions of these terms provided in amended sections 3(p)(1), 3(p)(3), 3(p)(4)(D), and new section 3(p)(4)(E), of the Small Business Act, 15 U.S.C. 632(p)(1), 632(p)(3), 632(p)(4)(D), 632(p)(4)(E).

SBA is amending § 126.200 by revising paragraph (b)(1) to implement the statutory authority for HUBZone small business concerns to be wholly or partly owned by NHOs. This rule adopts the language provided in new section 3(p)(3)(D) of the Small Business Act, 15 U.S.C. 632(p)(3)(D).

Compliance with Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)  
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800.

### Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

### Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this direct final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

### Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

### Regulatory Flexibility Act, 5 U.S.C. 601-612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the

meaning of RFA, SBA certifies that this direct rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Small businesses.

Accordingly, for the reasons stated in the supplementary information, SBA amends 13 CFR part 126 as follows:

**PART 126—HUBZONE PROGRAM**

1. The authority for 13 CFR part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

2. Amend § 126.103 by revising the definitions of “Base closure area”, “HUBZone”, “HUBZone small business concern (HUBZone SBC)”, and “Qualified base closure area” and by adding new definitions alphabetically for the terms “Native Hawaiian Organization (NHO)” and “Qualified disaster area”, to read as follows:

§ 126.103 What definitions are important in the HUBZone program?

\* \* \* \* \*

Base closure area means:

(1) Lands within the external boundaries of a military installation that were closed through a privatization process under the authority of:

(i) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101-510; 10 U.S.C. 2687 note);

(ii) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note);

(iii) 10 U.S.C. 2687; or

(iv) Any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures or redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(2) The census tract or nonmetropolitan county (excluding any qualified census tract and any qualified non-metropolitan county) in which the lands described in paragraph (1) of this definition are wholly contained;

(3) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified non-metropolitan county) the boundaries of which intersect the area described in paragraph (1) of this definition; and

(4) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified non-metropolitan county) the boundaries of which are contiguous to the area described in paragraph (2) or paragraph (3) of this definition.

\* \* \* \* \*

HUBZone means a historically underutilized business zone, which is an area located within one or more:

- (1) Qualified census tracts;
- (2) Qualified non-metropolitan counties;
- (3) Lands within the external boundaries of an Indian reservation;
- (4) Qualified base closure areas;
- (5) Redesignated areas; or
- (6) Qualified disaster areas.

HUBZone small business concern (HUBZone SBC) means an SBC that is:

- (1) At least 51% owned and controlled by 1 or more persons, each of whom is a United States citizen;
- (2) An ANC owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1));
- (3) A direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of the ANCSA, 43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the ANCSA, 43 U.S.C. 1626(e)(2));
- (4) Wholly owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;
- (5) An SBC that is owned in part by one or more Indian Tribal Governments or in part by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs;
- (6) An SBC that is wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs;
- (7) An SBC that is a small agricultural cooperative organized or incorporated in the United States, wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States or owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens;
- (8) Wholly owned by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or



(9) Owned in part by one or more Native Hawaiian Organizations or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns.

\* \* \* \* \*

Native Hawaiian Organization (NHO) means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

\* \* \* \* \*

Qualified base closure area means:

(1) A base closure area that is treated as a HUBZone for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the latter of the following:

(i) The date the Administrator makes a final determination as to whether or not to implement the applicable designations in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area; or

(ii) The date 8 years after the base closure area was initially designated as a HUBZone.

(2) However, if a base closure area was treated as a HUBZone at any time after 2010, it shall be treated as a HUBZone until such time as the Administrator makes a final determination as to whether or not to implement the applicable designations in accordance with the results of the 2020 decennial census.

\* \* \* \* \*

Qualified disaster area means any census tract or nonmetropolitan county located in an area for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), or located in an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be categorized as either a qualified census tract or qualified nonmetropolitan county, as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date. However, the following exceptions apply:

(1) In the case of a major disaster declared by the President, a census tract or nonmetropolitan county may be a qualified disaster area only during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county is located; and

(2) In the case of a catastrophic incident, a census tract or nonmetropolitan county may be a qualified disaster area only during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county is located.

\* \* \* \* \*

3. Amend § 126.200 by revising paragraph (b)(1) to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

\* \* \* \* \*

(b) Concerns owned by U.S. citizens, ANCs, NHOs, or CDCs.—(1) Ownership.

(i) The concern must be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership owned 50% by an individual who is a United States citizen and 50% by someone who is not a United States citizen, is not an eligible concern because it is not at least 51% owned by United States citizens.

(ii) The concern must be an ANC owned and controlled by Natives (determined pursuant to section 29(e)(1) of the ANCSA); or a direct or indirect subsidiary corporation, joint venture, or partnership of an ANC qualifying pursuant to section 29(e)(1) of ANCSA, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (determined pursuant to section 29(e)(2)) of the ANCSA);

(iii) The concern must be wholly owned by one or more NHOs, or by a corporation that is wholly owned by one or more NHOs, or owned in part by one or more NHOs, if all other owners are either United States citizens or small business concerns; or

(iv) The concern must be wholly owned by a CDC, or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs.

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Dated: July 22, 2016.

Maria Contreras-Sweet,  
Administrator.

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